

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

APPLICANTS: Mark C. Pace & Thomas W. Cook
APPLICATION NO.: 09/782,677
FILING DATE: February 12, 2001
TITLE: AUTOMATED SERVICE SCHEDULING SYSTEM BASED ON CUSTOMER
VALUE
EXAMINER: Jonathan G. Sterrett
GROUP ART UNIT: 3623
ATTY. DKT. NO.: 19538-05784

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REPLY BRIEF

This Reply Brief is filed in accordance with 37 C.F.R. § 41.41 in response to the *Examiner's Answer*, mailed on October 27, 2006.

Argument

I. The customers in McDonough's virtual call center are not located at service locations in a business establishment, as claimed.

In the claimed invention, customers are located at service locations, and these service locations are located in a business establishment. The customers are therefore located in the

business establishment. As service events occur at these service locations throughout the business establishment, the service events are communicated to a decisioning system. For a given service event, the decisioning system selects a service attendant to provide service at the service location and then communicates that service location to the selected service attendant (i.e., the system tells the service attendant where in the business establishment the customer needing service is located). Although not specifically claimed, this allows the service attendant to go to that location and provide service to the customer there.

In McDonough, the customers are not at service locations as claimed located in the business establishment. In McDonough's virtual call center, the customers are located at remote locations and not at service locations in the business establishment. *See* McDonough, col. 3, lines 18-21. This leads to certain distinctions between McDonough and the claimed invention. As contrasted with claim 1, for example, McDonough does not send its service attendants a "message indicating the service location at which the event is to be serviced, where the indicated service location is in a business establishment."

Part 10 of the Examiner's Answer includes a mapping of claim 1 to McDonough. This claim mapping attempts to show where the limitation cited in the previous paragraph is disclosed in McDonough. Specifically, the claim mapping (in the second-to-last box) suggests that "the indicated service location (i.e.) the workstation is in a call center, which is a business establishment." Although the call center may be considered a business establishment, the customers in McDonough are certainly not located in the call center; they are located remotely from it, at their homes, offices, etc. Accordingly, the rejection completely ignores the requirement that the customers is at the service location. Conversely, the rejection ignores the requirement that the customers are at service locations in a business establishment when it

suggests that the limitation is satisfied by remote customers who contact the call center via telephone, fax, or email servers.

It is thus apparent that the examiner is applying the claims to McDonough dissected and out of context — ignoring in one instant that a customer must be located at the service location, and then ignoring in another instant that the service location is in a business establishment. This is not permissible in claim construction. The claim limitations must be interpreted consistently throughout the claim. Here, the claims require that the customer be at a service location and that the service location be in a business establishment. Nowhere in McDonough does the examiner point to a service location that is both (1) located in a business establishment and (2) a place where a customer is to be provided service due to a service event generated at that location. The service location as claimed, therefore, is not disclosed in McDonough

Moreover, in this mapping the examiner argues that the call center is the claimed “business establishment” in McDonough. Since McDonough’s customers are not located in the virtual call center, McDonough’s customers are not at the service location, according to that mapping. McDonough thus does not disclose this claimed feature.

II. The Examiner’s Answer misconstrues the term “indicated service location.”

The rejections at issue in this appeal rest upon an incorrect construction of the term “indicated service location.” Specifically, the Examiner’s Answer observes that the claims do not recite that the “service location” is in the business establishment, but rather that the “*indicated* service location” is in the business establishment. The examiner then turns to extrinsic evidence — a dictionary — to construe the term “indicated service location.” The examiner construes this term to mean locations that “the system indicates or points out to the resources that customer contacts have come in that require service.”

Applying this definition further, the examiner argues that the “indicated service location” limitation can be met not only by the customer’s actual location, but also by “the indication in the service center that a customer request has come in.” In other words, the examiner suggests that the claim does not require that the service location actually be in the business establishment. Rather, the claim term is met even when just an indication about the service location arrives at the business establishment even. But such an application of the claim would be absurd, since the claims on their face clearly require that the service location actually be in the business establishment.

As above, the examiner’s argument is ignoring one aspect of the claims while construing another. When read in its full context, the element from claim 1 is:

a communication system communicatively coupled to the decisioning system to transmit a message to the primary service attendant selected for an event, the message **indicating** the service location at which the event is to be serviced, where the **indicated** service location is in a business establishment.

The term “indicated service location” does not mean that the service location need not actually be in the business establishment, as the examiner argues. Rather, the term “indicated” is used to refer to the particular service location where the message is telling the service attendant to service the event. There are, after all, a number of service locations in the business establishment, and the term “indicated” service location just identifies the particular service location as being the that was indicated in the message sent to the service attendant. There is no need to turn to a dictionary to understand this claim term, and in fact doing so would not be consistent with the law because the claim term is clear on its face.

Accordingly, the examiner’s argument relies on the improper understanding that the claims do not actually require the service location to be in the business establishment, but rather

may be met even when just an “indication” about the service location is received by the business establishment. Because this claim construction is clearly erroneous, the rejections relying thereupon should be reversed.

III. McDonough cannot be modified as suggested in the rejection because McDonough does not dispatch service attendants, even though the claims do not expressly recite “dispatching” service attendants.

In the Appeal Brief, appellants argued against the modifications of McDonough in the obviousness rejections because the modifications would render McDonough unsuitable for its intended purpose and lacked any reasonable motivation. In the Examiner’s Answer, the examiner characterized these arguments as being based on the incorrect assertion that the claims require dispatching. This characterization is not correct. It is true that the claims do not specifically recite “dispatching” service attendants to provide service at the service locations. But appellants’ arguments about the improper combination need not rely on any assertion about the claims’ scope. The scope of the claims only becomes an issue when a proper combination of references is applied to the claims. Here, appellants were arguing that the proposed combination of references itself improper — regardless of what the claims recite or how the combination might be applied to the claims.

As an initial matter, appellants recognize that the claims do not specifically require that a selected service attendant go to the service location in the business establishment where the customer needs service. But the claims¹ do recite a decisioning system that receives an event where service is needed, selects a service attendant to service that event, and then sends a

¹ This example based on claim 1.

message to that service attendant telling the attendant where in the business establishment the customer needing service is located. These claimed features enable the dispatching² of the service attendant to a particular service location. Although the claims do not specifically recite “dispatching,” that McDonough is antithetical to the concept of dispatching is nevertheless relevant to appellants’ arguments.

McDonough is a virtual call center, and McDonough stresses the importance of the ability to service customer anywhere without being tied to any physical boundaries or limitations. As McDonough explains, the principle problem addressed is “connecting any customer to any sales and service resource through any access method at any time from any customer location.” *See* McDonough, col. 3, lines 57-59. Because McDonough is so dedicated to the concepts of remotely located customers and having a virtual — not a real — call center, it would not have been obvious to modify McDonough in the way the rejection seeks to do so. Effectively, the examiner is trying to turn McDonough’s virtual call center into a system that would dispatch attendants to physical locations in a business establishment. Doing so would clearly render McDonough’s system unsuitable for its intended purpose (as explained in Section III of the Arguments in the Appeal Brief), and there would have been no motivation to make such a modification in the first place (as explained in Section IV). For each of these reasons independently, the modification of McDonough would be improper under 35 U.S.C. § 103.

² The Merriam-Webster online dictionary (at www.m-w.com) defines the verb “dispatch” as: “to send off or away with promptness or speed.” This term therefore refers to the act of sending, such as sending service attendants to various locations throughout the business establishment. The claimed invention communicates to a selected service attendant that an event needs to be serviced at a particular location in the business establishment. In certain applications described the specification, these claimed actions cause the service attendant to go to the indicated location; thus, the actions may constitute dispatching the service attendant to the service location.

Accordingly, appellants are not arguing that the rejections are improper because the cited references fail to teach “dispatching.” Appellants have already pointed out specific claim limitations that the cited references do not disclose. The observation that McDonough is antithetical to dispatching systems was presented merely to explain why the proposed combinations of McDonough would be improper.

Summary

For the foregoing reasons, appellants believe that the examiner’s rejections of claims 1-75 were erroneous and respectfully request that the Board reverse the rejections.

Respectfully submitted,

MARK C. PACE & THOMAS W. COOK

Dated: December 27, 2006

By: /Robert A. Hulse/

Robert A. Hulse, Reg. No. 48,473
Attorney for Applicant
Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Tel.: (415) 875-2444
Fax: (415) 281-1350